

## **Senate Bill No. 518**

### **CHAPTER 448**

An act to amend Sections 2051.5, 10089.82, 10106, 14028, 14029, 14035, 14062, 15011, 15027, 15027.1, 15033, 15036, 15040, 15056, and 15059 of, and to add Sections 395, 14028.5, 14061.5, 15018.5, 15027.5, 15028.7, and 15039.5 to, and to repeal Section 15014 of, the Insurance Code, relating to homeowners' insurance.

[Approved by Governor September 30, 2005. Filed with  
Secretary of State September 30, 2005.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

SB 518, Kehoe. Homeowners' insurance: insurance adjusters.

Existing law generally regulates insurance, including homeowners' and other insurance relating to real and personal property.

This bill would require an insurer, after a covered loss, to provide, free of charge, a complete copy of the insured's current insurance policy or certificate within 30 calendar days of receipt of a request from the insured. It would provide that an insured who does not experience a covered loss shall, upon request, be entitled to one free copy of his or her current insurance policy or certificate annually.

Existing law prohibits an insurer, with respect to certain homeowners' insurance policies, from placing upon an insured a time limit of less than 12 months from the date that the first payment toward the actual cash value is made in order for the insured to collect the full replacement cost of the loss, subject to the policy limit.

This bill would provide that, as of January 1, 2007, in the event of a covered loss relating to a state of emergency, as defined, coverage for additional living expenses shall be for a period of 24 months, but shall be subject to other policy provisions, provided that any extension of time beyond the period provided in the policy shall not act to increase the additional living expense policy limit in force at the time of the loss.

Existing law requires an insurer under a homeowners' insurance policy to provide certain disclosures to an insured. Existing law allows the commissioner, with respect to one of these disclosures, to modify that disclosure only upon the request of an insurer.

This bill would apply this limitation on modification to other disclosures, as specified.

Existing law requires an applicant for a license to act as a public insurance adjuster to meet specified requirements, including passing a licensing examination and posting a surety bond or cash in the sum of \$5,000. Existing law provides that the examination requirement is waived for specified applicants.

This bill would raise the required amount of the bond or cash to \$20,000. It would delete the provision providing for waiver of the examination requirement for certain applicants.

Existing law sets forth the grounds for denying, suspending, or revoking a license to act as an insurance adjuster or public insurance adjuster.

This bill would make specified changes to the grounds for denying, suspending, or revoking those licenses.

Existing law requires that a contract between a public insurance adjuster and a client include specified provisions and information.

This bill would require that certain additional information relating to the insured, the insurer, and the adjuster be included in such a contract, and would prohibit a contract of this type from containing specified provisions. It would require that a public insurance adjuster provide the client with a written disclosure prior to the signing of the contract, as specified. The bill would make certain changes to the duties owed by the adjuster to the client.

Existing law prohibits a public adjuster from initiating any contract with a policyholder between 6 p.m. and 8 a.m.

This bill would instead prohibit a public adjuster from initiating any contact with a policyholder between those hours.

Existing law provides that, if a client cancels a contract with a public insurance adjuster, the adjuster is not entitled to receive compensation for services performed prior to the cancellation.

This bill would allow a public insurance adjuster to receive reimbursement for out-of-pocket emergency expenses paid for the client prior to cancellation if the adjuster provides the client with a specified statement.

The bill would impose additional regulatory requirements on public insurance adjusters relating to disclosures and receiving money on behalf of an insured.

Existing law allows an expired public adjuster's license or branch office certificate to be renewed within 5 years of its expiration if certain requirements are met.

This bill would instead provide that an expired license or certificate may be renewed within one year of its expiration if those conditions are met.

The bill would incorporate changes made by SB 2 that would become operative if both bills are enacted and this bill is enacted after SB 2.

*The people of the State of California do enact as follows:*

SECTION 1. Section 395 is added to the Insurance Code, to read:

395. After a covered loss, an insurer shall provide, free of charge, a complete copy of the insured's current insurance policy or certificate within 30 calendar days of receipt of a request from the insured. The time period for providing the insurance policy or certificate may be extended by the commissioner. An insured who does not experience a covered loss

shall, upon request, be entitled to one free copy of his or her current insurance policy or certificate annually. The insurance policy or certificate provided to the insured shall include, where applicable, the policy declarations page. This section shall not apply to commercial policies issued pursuant to Sections 675.5 and 675.6, and policies of workers' compensation insurance, as defined in Section 109.

SEC. 2. Section 2051.5 of the Insurance Code is amended to read:

2051.5. (a) Under an open policy that requires payment of the replacement cost for a loss, the measure of indemnity is the amount that it would cost the insured to repair, rebuild, or replace the thing lost or injured, without a deduction for physical depreciation, or the policy limit, whichever is less.

If the policy requires the insured to repair, rebuild, or replace the damaged property in order to collect the full replacement cost, the insurer shall pay the actual cash value of the damaged property, as defined in Section 2051, until the damaged property is repaired, rebuilt, or replaced. Once the property is repaired, rebuilt, or replaced, the insurer shall pay the difference between the actual cash value payment made and the full replacement cost reasonably paid to replace the damaged property, up to the limits stated in the policy.

(b) (1) Except as provided in paragraph (2), no time limit of less than 12 months from the date that the first payment toward the actual cash value is made shall be placed upon an insured in order to collect the full replacement cost of the loss, subject to the policy limit. Additional extensions of six months shall be provided to policyholders for good cause. In the event of a loss relating to a "state of emergency," as defined in Section 8558 of the Government Code, no time limit of less than 24 months from the date that the first payment toward the actual cash value is made shall be placed upon the insured in order to collect the full replacement cost of the loss, subject to the policy limit. Nothing in this section shall prohibit the insurer from allowing the insured additional time to collect the full replacement cost.

(2) In the event of a covered loss relating to a state of emergency, as defined in Section 8558 of the Government Code, coverage for additional living expenses shall be for a period of 24 months, but shall be subject to other policy provisions, provided that any extension of time required by this paragraph beyond the period provided in the policy shall not act to increase the additional living expense policy limit in force at the time of the loss. This paragraph shall become operative on January 1, 2007.

(c) In the event of a total loss of the insured structure, no policy issued or delivered in this state may contain a provision that limits or denies payment of the replacement cost in the event the insured decides to rebuild or replace the property at a location other than the insured premises. However, the measure of indemnity shall be based upon the replacement cost of the insured property and shall not be based upon the cost to repair, rebuild, or replace at a location other than the insured premises.

(d) Nothing in this section shall prohibit an insurer from restricting payment in cases of suspected fraud.

(e) The changes made to this section by the act that added this subdivision shall be implemented by an insurer on and after the effective date of that act, except that an insurer shall not be required to modify policy forms to be consistent with those changes until July 1, 2005. On and after July 1, 2005, all policy forms used by an insurer shall reflect those changes.

SEC. 3. Section 10089.82 of the Insurance Code is amended to read:

10089.82. (a) An insured may not be required to use the department's mediation process. An insurer may not be required to use the department's mediation process, except as provided in Section 10089.75.

(b) Neither the insurer nor the insured is required to accept an agreement proposed during the mediation.

(c) If the parties agree to a settlement agreement, the insured will have three business days to rescind the agreement. Notwithstanding Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code, if the insured rescinds the agreement, it may not be admitted in evidence or disclosed unless the insured and all other parties to the agreement expressly agree to its disclosure. If the agreement is not rescinded by the insured, it is binding on the insured and the insurer, and acts as a release of all specific claims for damages known at the time of the mediation presented and agreed upon in the mediation conference. If counsel for the insured is present at the mediation conference and a settlement is agreed upon that is signed by the insured's counsel, the agreement is immediately binding on the insured and may not be rescinded.

(d) This section does not affect rights under existing law for claims for damage that were undetected at the time of the settlement conference.

(e) All settlements reached as a result of department-referred mediation shall address only those issues raised for the purpose of resolution. Settlements and any accompanying releases are not effective to settle or resolve any claim or dispute not addressed by the mediator for the purpose of resolution, nor any claim that the insured may have related to the insurer's conduct in handling the claim. However, for mediations conducted pursuant to subdivision (b) of Section 10089.70, the insurer and insured may agree to a complete settlement and release of all disputes related to the claim, including any claim the insured may have related to the insurer's conduct in handling the claim, provided the legal effect of the release is disclosed and fully explained to the claimant by the mediator.

Referral to mediation or the pendency of a mediation under this article is not a basis to prevent or stay the filing of civil litigation arising in whole or in part out of the same facts. Any applicable statute of limitations or limitation on the insured's right to sue as set forth in Section 2071 is tolled for the number of days beginning from the notification date to the insurer pursuant to Section 10089.72, until the date on which the mediation is either completed or declined, or the date on which the insured fails to appear for a scheduled mediation for the second time, or, in the event that

a settlement is completed, the expiration of any applicable three-business-day cooling off period.

SEC. 3.5. Section 10089.82 of the Insurance Code is amended to read:

10089.82. (a) An insured may not be required to use the department's mediation process. An insurer may not be required to use the department's mediation process, except as provided in Section 10089.75.

(b) Neither the insurer nor the insured is required to accept an agreement proposed during the mediation.

(c) If the parties agree to a settlement agreement, the insured will have three business days to rescind the agreement. Notwithstanding Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code, if the insured rescinds the agreement, it may not be admitted in evidence or disclosed unless the insured and all other parties to the agreement expressly agree to its disclosure. If the agreement is not rescinded by the insured, it is binding on the insured and the insurer, and acts as a release of all specific claims for damages known at the time of the mediation presented and agreed upon in the mediation conference. If counsel for the insured is present at the mediation conference and a settlement is agreed upon that is signed by the insured's counsel, the agreement is immediately binding on the insured and may not be rescinded.

(d) This section does not affect rights under existing law for claims for damage that were undetected at the time of the settlement conference.

(e) All settlements reached as a result of department-referred mediation shall address only those issues raised for the purpose of resolution. Settlements and any accompanying releases are not effective to settle or resolve any claim or dispute not addressed by the mediator for the purpose of resolution, nor any claim that the insured may have related to the insurer's conduct in handling the claim. However, for mediations conducted pursuant to paragraph (1) of subdivision (a) of Section 10089.70, the insurer and insured may agree to a complete settlement and release of all disputes related to the claim, including any claim the insured may have related to the insurer's conduct in handling the claim, provided the legal effect of the release is disclosed and fully explained to the claimant by the mediator.

Referral to mediation or the pendency of a mediation under this article is not a basis to prevent or stay the filing of civil litigation arising in whole or in part out of the same facts. Any applicable statute of limitations or limitation on the insured's right to sue as set forth in Section 2071 is tolled for the number of days beginning from the notification date to the insurer pursuant to Section 10089.72, until the date on which the mediation is either completed or declined, or the date on which the insured fails to appear for a scheduled mediation for the second time, or, in the event that a settlement is completed, the expiration of any applicable three-business-day cooling off period.

SEC. 4. Section 10106 of the Insurance Code is amended to read:

10106. The Insurance Commissioner may modify a disclosure statement as contained in Section 10102, 10103, or 10103.5 only upon

request of an insurer. The modification shall only be for the purpose of adding new or clarifying existing language describing any form of dwelling coverage offered by an insurer. The commissioner's authority to modify the disclosure statement shall be limited solely to determining the clarity and accuracy of the information provided in the disclosure to ensure that the disclosure accurately reflects a new or existing product. It is the intent of the Legislature that the disclosure form be kept as brief as clarity and accuracy permit. Any modification to the disclosure statement shall be approved in writing by the commissioner.

SEC. 5. Section 14028 of the Insurance Code is amended to read:

14028. After a hearing the commissioner may deny a license unless the application makes a showing satisfactory to the commissioner that the applicant, if an individual, has not, or if the applicant is a person other than an individual, that its manager and each of its officers and partners have not:

- (a) Committed any acts or crimes constituting grounds for denial of licensure under Section 480 of the Business and Professions Code.
- (b) Been refused a license under this chapter or had a license revoked.
- (c) Been an officer, partner, or manager of any person who has been refused a license under this chapter or whose license has been revoked.
- (d) While unlicensed committed, or aided and abetted the commission of, any act for which a license is required by this chapter.
- (e) Committed any act or crime constituting grounds for denial of license under Section 1668.

SEC. 6. Section 14028.5 is added to the Insurance Code, to read:

14028.5. The commissioner may, without hearing, deny a license if the applicant has committed any act or crime constituting grounds for denial of license under Section 1669.

SEC. 7. Section 14029 of the Insurance Code is amended to read:

14029. (a) The business of each licensee shall be operated under the active direction, control, charge, or management, in this state, of the licensee, if the licensee is qualified, or the person who has qualified to act as the licensee's manager, if the licensee is not qualified.

(b) No person shall act as a manager of a licensee until he or she has complied with each of the following:

- (1) Demonstrated his or her qualifications by a written or oral examination, or a combination of both, if required by the commissioner.
- (2) Made a satisfactory showing to the commissioner that he or she has the qualifications prescribed by Section 14025 and that none of the facts stated in Section 14028 or 14028.5 exist as to him or her.

(c) If the manager, who has qualified as provided in this section, ceases for any reason whatsoever to be connected with the licensee to whom the license is issued, the licensee shall notify the commissioner in writing 30 days from the cessation. If notice is given, the license shall remain in force for a reasonable length of time to be determined by the rules of the commissioner pending the qualifications, as provided in this chapter, of another manager. If the licensee fails to notify the commissioner within the

30-day period, his or her license shall be subject to suspension or revocation and may be reinstated only upon the filing of an application for reinstatement, payment of the reinstatement fee, if any is due, and the qualification of a manager as provided herein.

(d) Every manager shall renew his or her authority by satisfying the requirements of Article 8 (commencing with Section 14090).

SEC. 8. Section 14035 of the Insurance Code is amended to read:

14035. A licensee shall, within 30 days after such change, notify the department of any change of his or her address and of any change in the officers or partners of such licensee. The principal place of business may be at a home or at a business address, but it shall be the place at which the licensee maintains a permanent office.

Applications, on forms prescribed by the commissioner, shall be submitted by all new officers or partners. The commissioner may suspend or revoke a license issued under this chapter if he or she determines that at the time the person became an officer or partner of a licensee, any of the facts stated in Section 14028 or 14028.5 existed as to such person.

SEC. 9. Section 14061.5 is added to the Insurance Code, to read:

14061.5. The commissioner may, without hearing, suspend or revoke a license issued under this chapter, or may issue a restricted license, if he or she determines that the licensee has committed any act or crime constituting grounds for denial of license under Section 14028.5.

SEC. 10. Section 14062 of the Insurance Code is amended to read:

14062. The record of conviction, or a certified copy thereof, shall be conclusive evidence of the conviction, as that term is used in this article or in Section 14028 or 14028.5.

A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article or of Section 14028 or 14028.5. The commissioner may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

SEC. 11. Section 15011 of the Insurance Code is amended to read:

15011. Before an application for a license is granted, the applicant shall meet all of the following:

- (a) Be at least 18 years of age.
- (b) Be a bona fide resident of the State of California.
- (c) Must be of good character and shall not have committed acts or crimes constituting grounds for denial of licensure under Section 1668 or 1669.
- (d) Shall have had sufficient experience, or special education or training, or both, in the handling of loss claims under insurance contracts

as determined by regulations adopted by the commissioner, and is competent to transact business and discharge the responsibilities of a public insurance adjuster in such a manner as to safeguard the interests of the public.

(e) Must maintain an office in the State of California with public access during regular business hours.

(f) Pass an exam given by the commissioner in regard to property loss adjusting.

(g) Post a surety bond executed by a surety company authorized to do business in this state in the sum of twenty thousand dollars (\$20,000).

(h) Comply with any other qualifications as required by the commissioner.

SEC. 12. Section 15014 of the Insurance Code is repealed.

SEC. 13. Section 15018.5 is added to the Insurance Code, to read:

15018.5. The commissioner may, without hearing, deny an application if the applicant has committed any act or been convicted of a crime constituting grounds for denial of license under Section 1669.

SEC. 14. Section 15027 of the Insurance Code is amended to read:

15027. (a) No licensee shall, directly or indirectly, act within this state as a public insurance adjuster without having first entered into a contract, in writing, on a form approved by the insurance commissioner and executed in duplicate by the public adjuster and the insured or a duly authorized representative. One original contract shall be kept on file by the licensee, available at all times for inspection, without notice, by the commissioner or his or her duly authorized representative, and one original contract shall be given to the insured.

(b) The written contract between the licensee and the insured shall contain each of the following:

(1) Title of "Public Adjuster Contract."

(2) The name, business name, license number, telephone number, and address of the licensee.

(3) The name and address of the insured.

(4) A description of the loss and its location, if applicable.

(5) The name of the insurer and the policy number, if known.

(6) The full salary, fee, commission, or other consideration the licensee is to receive for services under the contract.

(7) A description of the services to be provided to the insured.

(8) Signatures of the licensee and the insured.

(9) The date the contract was signed by the licensee and the date the contract was signed by the insured.

(10) The following statement: "As a public adjuster, I am required by the California Insurance Code to post a surety bond in the sum of \$20,000 to cover certain kinds of claims made by you, the insured. If you have any questions concerning the surety bond, you may contact the California Department of Insurance Producer Licensing Call Center at 1-800-967-9331 or [www.insurance.ca.gov](http://www.insurance.ca.gov)."



(11) A statement of the compensation to the licensee, including the percentage and base to which the percentage applies.

(12) A statement that the insured has the right to rescind the contract within three business days of signing it.

(c) A contract covered by this section shall not contain a contract term that does any of the following:

(1) Allows the licensee's fee to be collected when money is due from an insurer, but not paid, or allows a licensee to collect the entire fee from the first payment issued by an insurer, rather than as a percentage of each payment issued by an insurer.

(2) Requires the insured to authorize an insurer to issue a payment only in the name of the licensee.

(3) Imposes late fees or collection costs on the insured.

(d) No licensee shall solicit or attempt to solicit a client for employment during the progress of a loss-producing occurrence.

(e) No licensee or any other person or entity offering, for a fee, service regulated by this chapter shall solicit a client for employment or initiate any contact with a policyholder between the hours of 6 p.m. and 8 a.m.

(f) No licensee shall use any form of contract other than that approved by the commissioner and which contains each of the following:

(1) A provision allowing the client to rescind the contract by written notice sent or delivered by certified mail, return receipt requested, or other form of mailing which provides proof of mailing, to the licensee by midnight of the third business day after the day on which the client signs a contract which complies with this section. Each copy of the contract shall contain a completed form, captioned "Notice of Cancellation," which shall be placed at the end of the contract and be separated from the remainder of the contract by a printed line. Nothing shall be printed on the reverse side of the notice form. The notice form shall be completed by the licensee, and shall contain in type of at least 10-point the following statement written in the same language, e.g., Spanish, as used in the contract:

#### Notice of Cancellation

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(Date of Contract)

You may cancel this contract within three business days from the above date without any penalty or obligation to pay your public adjuster, other than for reimbursement of moneys paid by your public adjuster for out-of-pocket emergency expenses for you or on your behalf. If your public adjuster seeks reimbursement from you for out-of-pocket emergency expenses, your public adjuster shall provide you with an itemized statement of those emergency expenses advanced to you or on your behalf if the cancellation is made within the first three business days after the contract was initiated. Nothing in this contract permits your

public adjuster to recover any costs, except for out-of-pocket emergency expenses advanced to you.

If you cancel, any money or other consideration paid by you will be returned within five business days following the receipt of your cancellation notice, and any security interest arising out of the transaction will be canceled.

To cancel this contract, mail or deliver by certified mail, return receipt requested, or other form of mailing which provides proof of mailing, a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to:

\_\_\_\_\_  
(name of public adjuster)  
at  
\_\_\_\_\_  
(address of public adjuster's place of business)  
not later than midnight of \_\_\_\_\_  
(Date)  
I hereby cancel this contract \_\_\_\_\_  
(Date)  
\_\_\_\_\_  
(Client's signature)

(2) The statement "WE REPRESENT THE INSURED ONLY" prominently displayed in at least 10-point type.

(3) A provision disclosing the percentage of the insured's claim, or other fee, that the licensee will charge for his or her services. The licensee shall obtain the initials of the insured next to this provision.

(4) A conspicuous statement in at least 10-point type in immediate proximity to the space reserved for the client's signature, as follows: "You may cancel this contract at any time before midnight of the third business day after the date of this contract. See the notice of cancellation form at the end of this contract for an explanation of this right."

(g) No licensee shall knowingly make any false report to his or her employer or divulge to any other person, except as he or she may be required by law to do so, any information acquired by him or her except at the direction of the employer or a client for whom the information is obtained.

(h) No licensee shall use a badge in connection with the official activities of the licensee's business.

(i) No licensee shall permit an employee or agent in his or her own name to advertise, engage clients, furnish reports, or present bills to clients, or in any manner whatever to conduct business for which a license is required under this chapter.

(j) Pursuant to subdivisions (a) and (c) of Section 15006, the commissioner shall have the authority to enforce the provisions of this

chapter and prosecute violations thereunder committed by unlicensed persons or entities that hold themselves out or act as public insurance adjusters.

(k) For purposes of this section, “business day” shall have the same meaning given to that term in subdivision (e) of Section 1689.5 of the Civil Code, as in effect on the operative date of this statute.

(l) The contract and the notice of cancellation set forth in paragraph (1) of subdivision (f) shall be written in the same language, e.g., Spanish, as principally used in the negotiation of the contract.

(m) Within five business days after a contract has been canceled, the licensee shall tender to the client any payments made by the client and any note or other evidence of indebtedness, including an itemized statement of all amounts tendered to the client.

(n) The licensee is not entitled to compensation for services performed prior to cancellation, other than for reimbursement of moneys paid by the licensee for out-of-pocket emergency expenses for the client or on behalf of the client. If the licensee seeks reimbursement from the client for out-of-pocket emergency expenses, and if the cancellation is made within the first three business days after the contract was initiated, the licensee shall provide the client with an itemized statement of those emergency expenses advanced to the client or on behalf of the client by the licensee. Nothing in this subdivision shall permit the licensee to recover any costs, except for out-of-pocket emergency expenses advanced to the client. Any security interest shall be canceled upon cancellation of the contract.

(o) Notice of cancellation given by the client need not take the particular form specified in paragraph (1) of subdivision (f). Notice of cancellation, however expressed, is effective if it indicates the intention of the client not to be bound by the contract.

(p) Cancellation occurs when the client gives written notice of cancellation by certified mail, return receipt requested, or other form of mailing which provides proof of mailing, to the licensee at the address specified in the contract.

(q) Notice of cancellation, if given by mail, is effective when sent by certified mail, return receipt requested, or other form of mailing which provides proof of mailing, properly addressed with postage prepaid.

(r) Until the licensee has complied with this section, the client may cancel the contract.

(s) The contracts shall be executed in duplicate. The licensee shall retain one original contract, and shall provide the insured with an original contract.

(t) The licensee shall provide the client with an original contract and notice of cancellation at the time the client signs the contract.

(u) Any confession of judgment or waiver of the provisions of this chapter shall be deemed contrary to public policy and shall be void and unenforceable.

(v) Prior to the signing of the contract, the licensee shall provide the insured with a separate printed disclosure document in the following form that bears the name and license number of the licensee:

“DISCLOSURE

There are three types of insurance adjusters that could be involved in the processing of your insurance claim. The definitions of the three types are as follows:

(1) Public adjusters means the insurance adjusters who do not work for your insurance company. They work for you, the insured, to assist in the preparation, presentation, and settlement of your claim. You hire them by signing a contract and agreeing to pay them a fee or commission based on a percentage of the settlement, or other method of compensation. Public adjusters are required to be licensed, bonded, and tested by the State of California to represent your interest only.

(2) Company adjusters means the insurance adjusters who are employees of your insurance company. They represent your insurance company and are paid by your insurance company. They will not charge you a fee and are not individually licensed or tested by the State of California.

(3) Independent adjusters means the insurance adjusters who are hired on a contract basis by your insurance company to represent the company in the settlement of the claim. They are paid by your insurance company. They will not charge you a fee.

You have the right, but are not required, to use the services of a public adjuster in the preparation and handling of your insurance claim.

Public adjusters cannot solicit your business while the loss is underway, or between the hours of 6 p.m. and 8 a.m.

Your “Public Adjuster Contract,” with a public adjuster representing you, should clearly indicate the amount of the fee you will be paying to your public adjuster. Your contract, with this fee percentage, should be acknowledged by your initials on the “Public Adjuster Contract.” The salary, fee, commission, or other consideration is to be paid by you (the insured), not the insurance company (insurer).

You have the right to cancel the contract with your public adjuster, without any penalty or obligation, within three business days from the date the contract is signed.

If you cancel the contract with your public adjuster, any money or other consideration paid by you will be returned within five business days following the receipt of your cancellation notice, and any security interest arising out of the transaction will be canceled.

To cancel the contract with your public adjuster, mail or deliver by certified mail, return receipt requested, or other form of mailing which provides proof of mailing, a signed and dated copy of the cancellation notice, or any other written notice, or send a telegram to the public adjuster at the address in the contract.

You have the right to, and may, communicate with your insurance company at any time if you feel the need during the claims process.

If you have any concerns or questions, the officers at the California Department of Insurance Consumer Hotline are there to help you. Please call them at 1-800-927-HELP (4357), or [www.insurance.ca.gov](http://www.insurance.ca.gov).”

(w) No later than three business days after the cancellation has expired, the public adjuster shall notify the insurer, its adjuster, or its attorney, that he or she has entered into a written contract with the insured.

(x) If the licensee misrepresents or conceals a material fact from the insured prior to execution of the contract, the insured is entitled to rescind the contract without time limit.

SEC. 15. Section 15027.1 of the Insurance Code is amended to read:

15027.1. (a) Notwithstanding subdivision (e) of Section 15027, a licensee shall not solicit a contract of engagement for residential properties under this chapter until seven calendar days have elapsed after the occurrence of a disaster.

(b) Subdivision (a) shall not apply if the licensee is contacted directly by the insured or the insured’s representative.

(c) For the purposes of this section, “disaster” means a loss-producing event that damages or destroys more than 25 dwellings, or a “disaster” as that term is defined in subdivision (b) of Section 1689.14 of the Civil Code.

SEC. 16. Section 15027.5 is added to the Insurance Code, to read:

15027.5. Any person acting as a public adjuster who has executed a contract as described in Section 15027 is the agent of the insured. While acting under the authority of such a contract, a public adjuster may not receive any fees or other consideration, monetary or otherwise, from either the insured or any other source, in excess of the amount or percentage provided in the contract. Any compensation received by the public adjuster from any party or any other source connected to the claim adjustment, including any contractor, insurer, or vendor, shall be disclosed by the public adjuster to the insured. The insured may rescind the contract if the adjuster fails to make the required disclosure or if the public adjuster’s receipt of any compensation from a third party conflicts with the interests of the insured.

SEC. 17. Section 15028.7 is added to the Insurance Code, to read:

15028.7. (a) A public adjuster who receives, accepts, or holds any funds on behalf of an insured towards the settlement of a claim for loss or damage shall deposit the funds in a non-interest-bearing escrow or trust account in a financial institution that is insured by an agency of the federal government in the adjuster’s home state or the state where the loss occurred.

(b) All funds held in an escrow or trust account shall be the property of the insured and shall be held pursuant to a written contract signed by the insured and the public adjuster.

(c) A public adjuster who receives any fiduciary funds shall, within 15 business days of receipt, deposit the funds in the escrow account and provide a written statement to the insured showing the amount of funds received and deposited in escrow.

(d) A public adjuster who, after reasonable diligence, is unable to obtain the endorsements of all payees designated on any bank draft representing fiduciary funds, or who receives a written statement from the insured indicating that he or she does not wish to establish an escrow or trust account, shall be exempt from the requirements of subdivisions (a) to (c), inclusive.

(e) The endorsement by a payee designated on any bank draft representing fiduciary funds shall not be construed as a waiver of any potential right of the payee to dispute the public adjuster's entitlement to those funds or any portion thereof.

SEC. 18. Section 15033 of the Insurance Code is amended to read:

15033. No license shall be issued under this chapter unless the applicant files with the commissioner a surety bond executed by a surety company authorized to do business in the state in the sum of twenty thousand dollars (\$20,000) conditioned for the faithful and honest conduct of business by the applicant. The bond, as to its form, execution, and sufficiency of the surety shall be approved by the commissioner.

SEC. 19. Section 15036 of the Insurance Code is amended to read:

15036. In lieu of the surety bond required by this chapter there may be deposited with the State of California the sum of twenty thousand dollars (\$20,000) in cash, or evidence of deposit of the sum of twenty thousand dollars (\$20,000) in banks authorized to do business in this state and insured by the Federal Deposit Insurance Corporation, or investment certificates or share accounts in the amount of twenty thousand dollars (\$20,000) issued by a savings association doing business in this state and insured by the Federal Deposit Insurance Corporation, or evidence of a certificate of funds or share account of the sum of twenty thousand dollars (\$20,000) in a credit union as defined in Section 14000 of the Financial Code whose share deposits are guaranteed by the National Credit Union Administration or guaranteed by any other agency approved by the Department of Financial Institutions.

SEC. 20. Section 15039.5 is added to the Insurance Code, to read:

15039.5. The commissioner may, without hearing, suspend or revoke a license issued under this chapter if he or she determines that the licensee has committed any act or crime constituting grounds for denial of license under Section 15018.5.

SEC. 21. Section 15040 of the Insurance Code is amended to read:

15040. The record or conviction, or a certified copy thereof, shall be conclusive evidence of the conviction as that term is used in this article or in Section 15018 or 15018.5.

A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article or of Section 15018 or 15018.5. The commissioner may order the license

suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

SEC. 22. Section 15056 of the Insurance Code is amended to read:

15056. Except as otherwise provided in this article, an expired license or branch office certificate may be renewed at any time within one year after its expiration on the filing of an application for renewal on a form prescribed by the commissioner, and the payment of a renewal fee in effect on the last preceding regular renewal date. If the license or certificate is renewed more than 30 days after its expiration, the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license or certificate shall continue in effect through the date provided in Section 15044 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

Renewal of a license or certificate shall not prohibit the bringing of disciplinary proceedings for an act committed before the effective date of the renewal.

SEC. 23. Section 15059 of the Insurance Code is amended to read:

15059. A license or branch office certificate which is not renewed within one year after its expiration may not be renewed, restored, reinstated, or reissued thereafter.

The holder of the license or certificate may obtain a new license or certificate only on compliance with all of the provisions of this chapter relating to the issuance of an original license or certificate.

SEC. 24. Section 3.5 of this bill incorporates amendments to Section 10089.82 of the Insurance Code proposed by both this bill and SB 2. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 10089.82 of the Insurance Code, and (3) this bill is enacted after SB 2, in which case Section 3 of this bill shall not become operative.